



# **Headquarters Policy Flash**

**FLASH 2002-05**

**DATE:** January 22, 2002

**TO:** Procurement Directors

**FROM:** Office of Procurement and Assistance Policy, ME-61  
Office of Procurement and Assistance Management

**SUBJECT:** **Revision to Acquisition Letter 2002-02 and Overview of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107)**

**SUMMARY:** This Policy Flash summarizes procurement related items included in the National Defense Authorization Act for Fiscal Year 2002, Pub. L. 107-107 and provides an administrative correction to Acquisition Letter 2002-02 Implementation of Fiscal Year (FY) 2002 Legislative Provisions.

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**A. Revision of Acquisition Letter 2002-02**

Acquisition Letter (AL) 2002-02 implements FY 2002 legislative provisions for the Energy and Water Act and the Department of Interior and Related Agencies. Page 8, clause number two, Lobbying Restriction (Department of Interior and Related Agencies Appropriations Act, 2002) is amended to read as follows:

*"The contractor agrees that none of the funds obligated on this award shall be made available for any activity **or** the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation."*

The change to the clause is highlighted in bold. The administrative change to the AL is available via the Internet at <http://professionals.pr.doe.gov/ma5/ma-5web.nsf/?Open>

**B. Overview of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107)**

The following two provisions are contained in the National Defense Authorization Act for Fiscal Year 2002, which is Public Law 107-107, signed into law December 28, 2001. Both sections will require either FAR or OMB implementation. Guidance will be communicated once action has been taken.

**1. Section 823 - One-Year Extension of Program Applying Simplified Procedures to Certain Commercial Items.**


The test pilot program discussed in FAR 13.5 is extended until January 1, 2003. The original test pilot program expired on January 1, 2002. As stated in FAR 13.5, contracting officers may use this authority to award contracts after the expiration date for solicitations issued before January 1, 2002. Pending formal amendment to the FAR, the Civilian Agency Acquisition Council has recommended that a class deviation be processed. Authorization of the Class Deviation providing for the extension of the test pilot program is transmitted along with this Flash.

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**2. Section 831 - Identification of Errors Made By Executive Agencies In Payments To Contractors And Recovery Of Amounts Erroneously Paid**

Requires that the head of each executive agency that enters into contracts with a total value in excess of \$500,000,000 in a fiscal year shall carry out a cost-effective program for identifying any errors made in paying the contractors and for recovering any amounts erroneously paid to the contractors. An established program shall include recovery audits and recovery activities . The head of the executive agency shall determine, in accordance with guidance provided by OMB, the classes of contracts to which recovery audits and recovery activities are applied.

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at [denise.wright@pr.doe.gov](mailto:denise.wright@pr.doe.gov)

  
Gwendolyn S. Cowan  
Director

cc:  
PPAG Members

**CLASS DEVIATION FROM  
FEDERAL ACQUISITION REGULATION (FAR) 13.5,  
Test Program for Certain Commercial Items**

**Action:** Section 4202 of the Clinger-Cohen of 1996 (Pub. L. 104-106) establishes a test program for certain commercial items. Among other things, Pub. L. 104-106 allows for all acquisitions of commercial items to be conducted using simplified procedures. The test program authorizes the use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including options. The test program expired on January 1, 2002. Section 823 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, extends the test program to January 1, 2003.

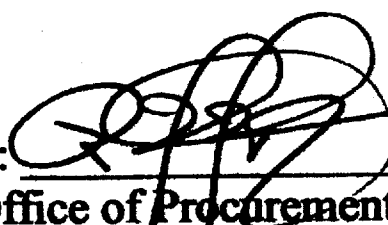
Contracting officers are directed to make award of contracts that were solicited under this authority prior to the expiration.

FAR 13.500(d) is affected by this deviation.


**Rationale:** This class deviation extends the test program period as discussed in FAR 13.5. The purpose of the test program is to entrust contracting officers with added procedural discretion and flexibility, in order to solicit, offer, evaluate, and award commercial item acquisitions in an uncomplicated manner that maximizes efficiency and economy and minimizes burden and administrative cost for the Government and Industry.

The Civilian Agency Acquisition Council has issued a letter 2002-01 providing for consultation for a Class Deviation to extend the test program. An expedited FAR case is being processed to change the date of expiration for the program in FAR 13.500(d). Pending issuance of an interim rule effecting that change, it is recommended that a class deviation remain in effect until January 1, 2003 or until issuance of the appropriate FAR change, whichever occurs first.

**Consultation:** In accordance with FAR 1.404 consultation with the Civilian Agency Acquisition Council Chairman before approving this class deviation to the FAR has been accomplished. The appropriate consultation and approval have been completed under the authority granted to the civilian agencies under Civilian Agency Acquisition Letter 2002-01.

APPROVAL:   
Director of Office of Procurement and  
Assistance Management  
Department of Energy

DATE JAN 17 2002

APPROVAL:   
Director of Office of Procurement and  
Assistance Management  
National Nuclear Security Administration

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